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Geraldine Cooney

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October 19, 2011

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants	:	Garnier et al.	Confirmation No.:	7212
Serial No.	:	10/588,321		
Filed	:	08/03/2006		
Patent No.	:	8,008,230		
Granted	:	08/30/2011		
Title	:	SYNERGISTIC ANTIFUNGAL DDAC COMPOSITIONS		
Art Unit	:	1617		
Examiner	:	Danielle D. Sullivan		

Mail Stop Patent Ext.  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**APPLICATIONS FOR PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. 1.705**

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) and provided with the Notice of Allowance (04/29/2011), and in light of the recent ruling in *Wyeth v. Dudas*, No. 2009-1120, slip op. (Court of Appeals for the Federal Circuit) the Applicants submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705. As stated in 37 C.F.R. 1.705(b):

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.

## **1. Payment of fee under § 1.18(e)**

Applicant hereby authorizes the Patent Office to charge the petition fee set forth in § 1.18(e) and any other fees that may be due to Deposit Account 10-0750/PRD2188USPCT/JKM.

## **2. Statement of Facts**

Applicants respectfully request that an additional at least 106 days of Patent Term Adjustment be added to the 1010 days of additional patent term for Patent Office delay already calculated on PAIR, resulting in a total Patent Term Adjustment of at least 1116 days.

### **2A “A Delay” Calculation**

The USPTO’s initial determination, which, for purposes of this request and in keeping with the explanation provided in *Wyeth*, Applicants will refer to as the “A delay” was that the present application was entitled to 493 days of patent term adjustment for A delays. The PTOs “A delay” calculation appears to be correct.

### **2B “B Delay” Calculation**

The Patent Office has **not properly calculated** the Patent Term Adjustment for the days related to the “B delay,” which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

The *Wyeth* decision states that “the ‘A period’ and ‘B period’ overlap only if they occur on the same calendar day or days” (*Wyeth*, No. 07-1492, slip op. at 8).

Applicant’s calculation of the “B” delay is not consistent with the USPTO calculation.

Applicant respectfully requests the Office recalculate the “B” delay.

The Filing date of the application is August 3, 2006 and the 3 year pendency date is August 3, 2009. The application issued on August 30, 2011, which is 757 days after the 3 year pendency date of August 3, 2009. Therefore, the “B” delay is 757 days. The USPTO has a calculation of 651 days.

Thus, according to the *Wyeth* decision, Applicants are entitled to both the “A delay” of 493 days and the “B delay” of 757 days minus any overlap which occurs on the same calendar days of 59 days and 75 days of Applicant delay as of the submission date of this Petition. For these reasons, the Patent Term Adjustment for this case should be at least 1116 days.

### 3. Other Circumstances

As required under 37 C.F.R. §1.705(b)(iii) and (iv)(B), Applicant confirms that, (1) this application is not subject to a Terminal Disclaimer; and (2) except for the Applicant’s delay periods set forth above, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

Respectfully submitted,

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Dated: October 19, 2011